

December 15, 2023

**VIA CM/ECF**

Hon. Gregory H. Woods  
United States District Court, Southern District of New York  
500 Pearl Street, Room 1920, New York, NY 10007

**Re: *U.S. Bank National Association, et al. v. The Charitable Donor Advised Fund, L.P. and CLO HoldCo Ltd. (Case No. 1:21-cv-11059-GHW)***

Dear Judge Woods,

Plaintiffs/Counter-Defendants U.S. Bank, National Association, in its capacity as trustee (the “Trustee”), Acis Capital Management, L.P. (“ACM”), and Joshua N. Terry (“Mr. Terry,” and, together with ACM and the Trustee, “Plaintiffs”), Defendants/Counter-Plaintiffs Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”), CLO HoldCo, Ltd. (“CLOH”), and NexPoint Diversified Real Estate Trust (“NexPoint,” and, together with DAF and CLOH, “Defendants”), and Counter-Defendant Brigade Capital Management, LP (“Brigade,” and, collective with Plaintiffs and Defendants, the “Parties”) jointly submit this letter pursuant to Paragraph 1.E of the Court’s Individual Rules of Practice in Civil Cases to request a brief extension of expert discovery deadlines set out in the Court’s Case Management Plan and Scheduling Order (the “CMO,” Dkt. 76, as amended by Dkts. 159, 191, 196, 211, 222). This is the sixth request for an extension. All Parties consent to the Request. Counter-Defendant Highland CLO Funding, Ltd. (“HCLOF”) is not a party to this letter and takes no position with respect to the extension of the deadlines as it is not participating in discovery per the Court’s August 4, 2023, Order (Dkt. 172).

To accommodate scheduling conflicts and as a matter of professional courtesy, the Parties have agreed to jointly seek an extension of the deadline for opposing/rebuttal expert disclosures from December 19, 2023 to January 5, 2024 (*see* Dkt. 222); and extending the close of expert discovery from January 16, 2024 to February 2, 2024 (*see id.*). The parties also propose extending the deadline to move for summary judgment from February 13, 2024 to March 22, 2024 (*see* Dkt. 211). The parties do not seek to extend any other deadlines. The parties respectfully propose to keep the February 2, 2024, status conference to apprise the Court about the status of the case and address whether the Court would be inclined to defer briefing on summary judgment until after a resolution of the parties’ pending motions to dismiss.

The Parties and HCLOF respectfully reserve their rights to seek additional revisions. Further, CLOH and DAF respectfully specifically reserve their rights to seek additional revisions depending upon the resolution of their pending motions to compel (Dkts. 205 and 206) and of HCLOF’s pending motion to dismiss (Dkt. 177).

In making this proposal, none of the Parties waive any of their respective substantive or procedural rights, all of which they respectively reserve.

The Parties thank the Court for its attention to this request.

Respectfully Submitted,

/s/ Blair A. Adams

Jonathan E. Pickhardt  
Blair A. Adams  
Brendan Carroll  
Misha Boutilier  
Michael R. Bloom  
Jeffrey Arnier  
QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
51 Madison Avenue, 22nd Floor  
New York, New York 10010  
(212) 849-7000  
***Counsel for Plaintiffs ACIS Capital  
Management, L.P., and Joshua N. Terry***

/s/ Mark D. Kotwick

Mark D. Kotwick  
Thomas Ross Hooper  
Julie J. Hong  
SEWARD & KISSEL LLP  
One Battery Park Plaza  
New York, New York 10004  
(202) 574-1200  
***Counsel for Plaintiff U.S. Bank National  
Association, as Trustee***

/s/ Jason C. Hegt

Jason C. Hegt  
Alexis Kellert Godfrey  
LATHAM & WATKINS LLP  
1271 Avenue of the Americas  
New York, NY 10020 (212) 906-1200  
Jason.Hegt@lw.com  
Alexis.Godfrey@lw.com  
***Counsel for Counter-Defendant Brigade  
Capital Management, LP***

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti  
Kevin N. Colquitt (*admitted pro hac vice*)  
Griffin S. Rubin (*admitted pro hac vice*)  
SBAITI & COMPANY, PLLC  
2200 Ross Ave., Suite 4900W

/s/ Sawnie A. McEntire

Sawnie A. McEntire  
*Admitted Pro Hac Vice*  
Texas Bar No.: 13590100  
Fed ID #3476  
PARSONS MCENTIRE MCCLEARY PLLC  
1700 Pacific Avenue, Suite 4400  
Dallas, Texas 75201  
Telephone: (214) 237-4300  
Fax: (214) 237-4340  
E-mail: smcentire@pmmlaw.com

Roger L. McCleary  
*Admitted Pro Hac Vice*  
Texas Bar No.: 133937000  
Fed. ID #205  
PARSONS MCENTIRE MCCLEARY PLLC  
One Riverway, Suite 1800  
Houston, Texas 77056  
Telephone: (713) 960-7315  
Fax: (713) 960-7347  
E-mail: rmccleary@pmmlaw.com

Lindsey R. Skibell  
E-mail: rskibell@glennagre.com  
Jewel K. Tewiah  
E-mail: jtewiah@glennagre.com  
GLENN AGRE BERGMAN & FUENTES LLP  
55 Hudson Yards, 20th Floor  
New York, NY 10001  
Telephone: 212.358.5600  
***Counsel for CLO Holdco, Ltd. and The  
Charitable Donor Advised Fund, L.P.***

Dallas, TX 75201

(214) 432-2899

***Counsel for NexPoint Diversified Real  
Estate Trust***